

香港特別行政區政府
政務司司長辦公室



CHIEF SECRETARY
FOR ADMINISTRATION'S OFFICE
Government of the Hong Kong
Special Administrative Region

17 July 2008

Dr Hon Philip WONG Yu-hong, GBS
Chairman, Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central Hong Kong

Dear ~~Dr Wong,~~ Philip,

**Review on the Role of Government Officials
Appointed as Board Members of
Government-owned or Funded Statutory Bodies and Companies**

I am pleased to inform you that the review which the Administration has undertaken in response to the recommendations relating to the role of government officials sitting on the governing bodies of publicly-funded statutory organisations and good corporate governance and management in publicly-funded statutory organisations contained in Public Accounts Committee (PAC) Reports No. 48 and 49A, is now completed. The outcome of the review is set out in the attached report.

The review represents the Administration's strive to strengthen corporate governance for publicly-funded statutory bodies, and also as a positive response to PAC's constructive comments and recommendations. On this, I wish to thank the Committee for the time and effort that it has devoted to this important issue of public sector governance.

Yours sincerely,

(Henry Tang)

Chief Secretary for Administration

cc: Secretary for Commerce and Economic Development
Secretary for Financial Services and the Treasury
Director of Audit

**Review on the Role of Government Officials
Appointed as Board Members of
Government-owned or Funded Statutory Bodies and Companies**

PURPOSE

This report briefs members on the outcome of a limited review on the role of government officials appointed as board members of government-owned or funded statutory bodies and companies as well as corporate governance and management in publicly-funded statutory organisations, which the Administration has undertaken in response to the recommendations in Public Accounts Committee (PAC) Reports No. 48 and 49A.

BACKGROUND

PAC's Recommendations

2. In PAC Report No. 48 on the Hong Kong Applied Science and Technology Research Institute Company Ltd (ASTRI) tabled at the LegCo on 11 July 2007, the PAC recommended, inter alia, that the Government should review the role and responsibility of the government officials appointed to sit on the governing bodies and committees of statutory bodies or publicly-funded organisations (“government representatives”), and ensure that they are able to perform their role and responsibility. In November 2007, as a follow-up to the PAC’s recommendation, the Government undertook to conduct a limited review on the role of government officials appointed as board members in government-owned statutory corporations and companies.

3. In PAC Report No. 49A on the Hong Kong Tourism Board (HKTb) tabled at the LegCo on 30 April 2008, the PAC urged the Administration to expedite the above review to -

- (a) critically examine measures to ensure that good corporate governance and management are put in place in publicly-funded statutory organisations; and
- (b) consider promulgating a clear stipulation of the respective roles and responsibilities of the governing body, the government representatives and the Chief Executive Officer (CEO) of publicly-funded statutory organisations.

4. In addition, the PAC also urged the Administration to -

- (a) review how it can ensure that Controlling Officers for publicly-funded statutory organisations effectively perform their roles and responsibilities;

- (b) clearly state the intended roles and responsibilities of the government representatives when appointing them;
- (c) take measures to ensure that persons appointed as members of the governing bodies of publicly-funded statutory organisations are fully aware of their roles and responsibilities and to assist them in performing such roles and responsibilities effectively; and
- (d) ensure that the CEOs have good understanding of the legislation, government rules, regulations and policies relevant to the organisations, the framework for the control and management of public finances, and proper procedures governing the use of public funds.

THE REVIEW

Scope of the review

5. The limited review, which was undertaken in response to the PAC report on ASTRI, originally covered three categories of corporations/companies -

- (a) government-owned statutory corporations;
- (b) government-owned companies ; and
- (c) non-government-owned companies.

6. As a positive response to the latest PAC report on HKTB, the scope of the review has now been extended to include statutory bodies which are government-owned or under recurrent funding from the Government and companies which are partly or wholly funded by the Government. In the light of PAC's concern on the bigger issue of how to ensure good corporate governance and management in publicly-funded statutory organisations, the Administration has also extended the scope of the limited review to examine measures to ensure that good governance and management are in place in publicly-funded statutory bodies.

Review process

7. In the review process, we have taken stock of the present position of government representatives sitting on the governing bodies of government-owned or funded statutory organisations and companies, and looked into the existing guidelines regarding the governance of publicly-funded organisations. Specifically, we have examined the series of management and control measures on subvented organisations and the role of Controlling Officer in the management of these organisations, as set out in Financial Circular ("FC") No. 9/2004 entitled

“Guidelines on the Management and Control of Government Funding for Subvented Organisations” (the Circular). The Circular provides detailed guidelines to Controlling Officers for managing and controlling government subvention to subvented organisations. Such guidelines cover a wide range of measures which Controlling Officers may use to perform their funding control responsibility, including setting clear objectives for the subvented organisations to follow; reviewing or approving the organisations’ annual budget and programme of activities; monitoring work progress; requiring the organisations to submit audited accounts; and having access to the organisations’ records and accounts.

8. Regarding the governance issues, we have made reference to the guideline on governance launched by the Hong Kong Exchanges and Clearing Ltd in 2005 - “The Code on Corporate Governance Practice” (“the Code”)¹. The Code, which focuses on companies listed in Hong Kong, is drawn up on the basis of international best practices. In addition, we have also drawn reference from international guidelines on corporate governance for public sector organisations.

FINDINGS AND RECOMMENDATIONS OF THE LIMITED REVIEW

Governance of publicly-funded statutory bodies and specific roles of Controlling Officer, the Governing Body and the CEO (re. PAC’s recommendations in paras. 3(a), 3(b), and 4(a) above)

9. The Administration attaches great importance to good corporate governance and management. Having examined the Code and the international governance guidelines, we find that many of the key internal control and transparency measures that good governance requires are already covered in FC No. 9/2004. These include the setting of a clear statement of objectives; systematic devices and proper valuation methods to monitor performance against the established objectives; appropriate cost control system; approval of the organisations’ annual budget and programme of activities; high quality accounting and auditing standards; requirement to submit audited accounts and being subject to audit check.

10. The Administration considers that the guidelines contained in FC No. 9/2004 are sufficient in helping Controlling Officers to effectively perform their roles and responsibilities and to ensure that public money is used properly and effectively. By making reference to the guidelines set out in the Circular, Controlling Officers have in general exercised effective funding control over the subvented organisations under their purview. For a large number of subvented non-government organisations (NGOs), for example, the relevant Controlling Officers have put in place well-established systems to monitor and assess the

¹ The Code sets out the principles of good corporate governance with two levels of recommendations (a) code provisions which listed companies are required to comply; and (b) the recommended best practices. Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only.

financial performance of the subvented organisations on a regular and effective basis. In this regard, the Circular has in general provided useful and adequate guidelines to Controlling Officers, enabling them to take both general and specific measures to perform their funding responsibilities. We shall remind Controlling Officers to seek to review from time to time the funding control measures and the checks and balances in the system to ensure their adequacy over time.

11. As regards PAC's recommendation to put in place a standing mechanism for designated government representatives to report major matters or problems of the organisations to the responsible bureau secretaries and/or Controlling Officers, it is clearly set out in the guidelines to Controlling Officers that they should have unhindered access to the records and accounts of the subvented organisations and the latter are obliged to explain to the Controlling Officer concerned any matters relating to the receipt and expenditure of any money derived from public funds. Under the existing framework in FC No. 9/2004, therefore, Controlling Officers should be able to put in place the necessary mechanism to meet the reporting requirements.

12. Clearer delineation of roles and responsibilities between the Government, the governing body and the executive management of the publicly-funded statutory body, as an important element of governance, is however an aspect that may have scope for strengthening. Following this review, and also as a positive response to PAC's recommendations in para. 3(a), 3(b) and 4(a) above, the Administration will promulgate a set of broad guidelines explaining the essential aspects of good governance, including clarity in objectives; delineation of roles and responsibilities between the Government, the governing body, and the management; and internal control and transparency. We believe that these guidelines will provide useful reference to the respective Bureaux and Controlling Officers and should facilitate them in the discharge of their responsibilities on the statutory bodies under their policy and/or funding control purview.

Roles and responsibilities of government representatives in the governing body of statutory bodies and measures to facilitate them to perform their roles (re. PAC's recommendations in para. 2 and 4(b) above)

13. The role of government representative(s), in common with other members of the governing body, is to pursue the objects and public mission as stated in the statute which establishes the individual statutory organisation. Government representatives, together with all other board members, are collectively responsible for the overall performance of the statutory body. Thus, while the government representative on the board often acts as a link between the Government and the publicly-funded organisation, sound corporate governance does not and cannot solely rely on the presence of the government representative. The set of guidelines which the Administration will promulgate will therefore focus more on setting out the principles of good governance.

14. However, clear stipulation on the division of roles and responsibilities between various parties will serve to assist government representatives in the discharge of their duties (para. 12). We shall therefore advise Bureaux to clearly state the intended roles of the government officials when appointing them to sit on the governing board of the organisations under their policy/funding control purview.

15. As regards the need to designate government representatives sitting on governing bodies of the subvented organisations to perform specified roles, the Administration considers that effective governance hinges more on having a sound governance system that clearly sets out the accountability framework and the internal control to ensure compliance. While there are instances where the relevant Controlling Officer or his/her representative is appointed to the governing body of the organisation concerned, being a Controlling Officer for the subvented organisation per se is not an over-riding criterion for determining whether that officer or his/her representative should be appointed to the governing body. As such, the role played by a Controlling Officer for funding control purpose does not constitute a mandatory requirement for the Controlling Officer to be appointed to the governing body of publicly-funded organisations.

16. As to whether and which government officials should be appointed to the governing board of statutory bodies, PAC can rest assured that Administration will continue to strive for an optimal mix of the board of the statutory bodies, and will examine this issue having regard to all relevant factors such as statutory requirements, nature and operation of the organisation, policy objectives of the Government, and the unique circumstances in each case.

17. At present, many bureaux have already made arrangement for an alternate director to represent the Government at board meetings if and when the substantive member is unable to attend. It is considered that where applicable, this should be arranged if not already done so, as a means to facilitating the effective and continuous discharge of the government officials' duties as board members. Also, the Administration will continue to seek to improve the legal position of government representatives when such opportunities arise, as another means to facilitate them to perform their roles effectively.

Measures to ensure that members of governing bodies and CEOs of publicly-funded organisations effectively perform their roles and responsibilities (re. PAC's recommendations in paras. 4(c) and 4(d) above)

18. Although subvented organisations are not government departments and the government rules and regulations are not directly applicable to them, they have the same duty to ensure the proper use of public funds, having regard to the economy, efficiency and effectiveness in discharging their functions. To help the CEOs and senior management of these organisations to have better understanding of the legislation, regulations and policies which are relevant to them for the control and management of public finances, Controlling Officers can conduct training programmes and deliver resource kits. Alternatively, Controlling Officers can

include the relevant information in a tailor-made funding control instrument and update such information as necessary.

19. To enable non-official board members to fully understand their intended roles and responsibilities, the Administration will advise Bureaux and Departments to set out clearly in the letter of appointment for each board member the terms of appointment, their duties under the relevant legislation, and their fiduciary duties under common law.

WAY FORWARD

20. Following this review, the Administration will promulgate a set of guidelines advising Bureaux and Departments on the broad principles of good governance, to facilitate Controlling Officers in the discharge of their funding control responsibilities over the publicly-funded statutory organisations.

Administration Wing,
Chief Secretary for Administration's Office
17 July 2008